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Message Text

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SUBJECT; SUBSIDIES/COUNTERVAILING PAPER

1. TRADE POLICY REVIEW GROUP HAS APPROVED QUOTE U.S. PAPER ON SUBSIDIES AND COUNTERVAILING UNQUOTE FOR NOVEMBER 10 MEETING OF NTM SUBGROUP. THIS PAPER SHOULD BE TRANSMITTED IMMEDIATELY TO GATT SECRETARIAT AND TO KEY DELS. TEXT OF PAPER FOLLOWS.

2. QUOTE: THE UNITED STATES BELIEVES THAT AN APPROPRIATE SOLUTION FOR THE PROBLEMS THAT COUNTRIES ENCOUNTER IN THE AREAS OF SUBSIDIES AND COUNTERVAILING IS AN INTERNATIONAL CODE THAT CLEARLY DELINEATES RULES AND LIMITATIONS ON THE USE OF SUBSIDIES AND SETS OUT THE RIGHTS AND OBLIGATIONS OF COUNTRIES IN THE USE OF OFFSETTING MEASURES IN RESPONSE TO FAILURES TO ABIDE BY THOSE RULES AND LIMITATIONS.

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FOR DISCUSSION THE UNITED STATES IS OUTLINING ITS IDEAS ON THE BROAD FRAMEWORK OF A CODE OF RULES GOVERNING SUBSIDY PRACTICES AND RESPONSES TO THEM. IT WELCOMES THE IDEAS OF OTHER DELEGATIONS AND LOOKS FORWARD TO THE

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NEGOTIATION OF AN IMPROVED SET OF RULES IN THIS AREA.

AGREEMENT ON AN INTERNATIONAL CODE THAT LAYS DOWN AN

IMPROVED SET OF RULES GOVERNING SUBSIDY PRACTPCES AND RESPONSES TO THEM WOULD STRENGTHEN THE WORLD TRADING SYSTEM. IT WOULD DO SO BY REDUCING CONFLICT IN THE INTERPRETATION OF WHAT THE RIGHTS AND OBLIGATIONS OF COUNTRIES ARE IN THESE AREAS. IT WOULD DO SO BY CLARIFYING NATIONS' RESPONSIBILITIES IN THE USE OF SUCH MEASURES. AS A RESULT, ALL COUNTRIES THAT ADHERED TO THE CODE WOULD BENEFIT FROM IT.

SUCH A CODE SHOULD DEAL WITH THREE BASIC PROBLEMS. FIRST, SUBSIDIZATION CAN LEAD TO INCREASED EXPORTS BY ONE COUNTRY ARTIFICALLY DISTORTING NORMAL MARKET FORCES. SECOND, A COUNTRY MAY EXPERIENCE LOSS OF SALES IN THIRD-COUNTRY MARKETS IF ANOTHER COUNTRY'S SUBSIDIES RESULT IN INCREASED EXPORTS TO THOSE MARKETS. THE UNITED STATES CONSIDERS THIS SITUATION TO BE A PROBLEM OF INCREASING FREQUENCY AND IMPORTANCE AFFECTING THE EXPORTS OF BOTH DEVELOPED AND DEVELOPING COUNTRIES. FINALLY, A COUNTRY MAY EXPERIENCE LOSS OF SALES IN A SUBSIDIZING COUNTRY'S MARKET WHEN THE SUBSIDY RESULTS IN IMPORT REPLACEMENT IN THAT MARKET. MOREOVER, SUBSIDIES THAT RESULT IN IMPORT REPLACEMENT IN ONE COUNTRY MAY DEFLECT OTHER COUNTRIES' EXPORTS PREVIOUSLY ENTERING THAT COUNTRY TO THIRD-COUNTRY MARKETS, OFTEN TO THE DETRIMENT OF PRODUCERS IN THOSE THIRD COUNTRIES.

NEW INTERNATIONAL RULES ON SUBSIDIES AND OFFSETTING MEASURES SHOULD DEAL WITH ALL THREE OF THESE PROBLEMS. THE OBJECTIVE OF THESE RULES WOULD BE TO CATEGORIZE ALL TYPES OF SUBSIDY PRACTICES AND SET FORTH THE CONDITIONS BY WHICH OFFSETTING MEASURES COULD BE TAKEN AGAINST SUCH PRACTICES. IN PARTICULAR, RULES ARE NEEDED TO:

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(1) EFFECTIVELY DELINEATE THAT CATEGORY OF SUBSIDIES THAT SHOULD BE PROHIBITED;

(2) PLACE LIMITS AND CONSTRAINTS ON THE USE OF DOMESTIC SUBSIDIES THAT BENEFIT EXPORTS TO THE DETRIMENT OF OTHER NATIONS;

(3) DELINEATE WHICH SUBSIDY MEASURES SHOULD BE PERMITTED;

(4) REGULATE THE IMPOSITION OF COUNTERVAILING DUTIES BY AGREEMENT ON THE CONDITIONS AND PROCEDURES UNDER WHICH

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SUCH DUTIES MAY BE IMPOSED;

(5) ESTABLISH EFFECTIVE AND FAIR COUNTERMEASURES AGAINST FOREIGN SUBSIDIZATION THAT RESULTS IN DISPLACEMENT OF SALES IN THIRD COUNTRY MARKETS; AND

(6) ESTABLISH IMPROVED NOTIFICATION AND CONSULTATION PROCEDURES ON SUBSIDY PRACTICES, INCLUDING THOSE RESULTING IN IMPORT-REPLACEMENT.

SUBSIDIES AND OFFSETTING MEASURES, INCLUDING COUNTER-VAILING DUTIES, ARE INEXTRICABLY RELATED ISSUES, REQUIRING COORDINATED SOLUTIONS. A FRAMEWORK FOR DISCUSSION OF THESE PROBLEMS COULD CONSIST OF DEFINING THREE CATEGORIES OF SUBSIDIES -- PROHIBITED PRACTICES, PRACTICES THAT ARE SUBJECT TO OFFSETTING MEASURES ONLY WHEN CERTAIN CONDITIONS ARE MET, AND PRACTICES EXPRESSLY PERMITTED -- AND DEFINING THE CONDITIONS AND PROCEDURES UNDER WHICH OFFSETTING MEASURES MAY BE TAKEN. IN ADDITION, IT CAN BE EXPECTED THAT CONTROVERSIAL OR COMPLEX SUBSIDY PRACTICES, PARTICULAR-LY THOSE THAT ARE IN WIDESPREAD USE OR THAT ARE CLOSELY LINKED TO NATIONAL SOCIO-ECONOMIC GOALS, WILL REQUIRE SPECIAL RULES.

AGREEMENT ON AN APPROACH SUCH AS THIS WILL PROVIDE A COMMON BASIS FOR DISCUSSION AND NEGOTIATION. PAST EFFORTS IN GATT TO DEVELOP A SPECIFIC DEFINITION OF A SUBSIDY HAVE BEEN UNSUCCESSFUL. THE ADVANTAGE OF THE THREE-CATEGORY APPROACH IS THAT IT PROVIDES A PRAGMATIC FRAMEWORK FOR
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DISCUSSING THE TREATMENT OF THE ENTIRE RANGE OF SUBSIDY MEASURES. THE FOCUS THEN, IS NOT WHETHER A PARTICULAR PRACTICE IS OR SHOULD BE WITHIN THE PURVIEW OF INTERNATION-AL RULES ON SUBSIDIES, BUT RATHER WHETHER THE CATEGORY OF THE PRACTICE IS PROHIBITED, CONDITIONAL, OR PERMITTED.

POSSIBLE FRAMEWORK FOR A SOLUTION

THE CODE SHOULD CONSIST OF THREE CATEGORIES OF SUBSIDY PRACTICES -- PROHIBITED, CONDITIONAL, AND PERMITTED THE POTENTIAL USE OF OFFSETTING MEASURES WOULD, IN TURN, BE DETERMINED BY THE NATURE AND, AS APPROPRIATE, THE EFFECT OF THE SUBSIDY. THEIR ACTUAL USE WOULD BE SUBJECT TO AGREED CONDITIONS AND PROCEDURES.

PROHIBITED. BENEFITS DIRECTLY OR INDIRECTLY CONFERRED UPON EXPORTS THAT ARE NOT EQUALLY CONFERRED UPON GOODS PRODUCED DOMESTICALLY AND DESTINED FOR THE DOMESTIC MARKET, AND BENEFITS CONDITIONED ON EXPORT PERFORMANCE, WOULD BE PROHIBITED. COUNTRIES WOULD BE PERMITTED TO TAKE OFFSET-

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TING MEASURES AGAINST PROHIBITED PRACTICES WITHOUT ANY CONDITIONS, EXCEPT AS MAY BE OTHERWISE PROVIDED IN

SUPPLEMENTARY PROTOCOLS.

CONDITIONAL. BENEFITS WHOSE APPLICATION AND USE EQUALLY AFFECT ALL PRODUCTION, WHETHER DESTINED FOR THE DOMESTIC MARKET OR FOR EXPORT, WOULD BE CONDITIONAL AND WOULD BE SUBJECT TO OFFSETTING MEASURES ONLY UNDER CERTAIN CONDITIONS, SUCH AS AN INJURY TEST.

PERMITTED. THE PERMITTED CATEGORY WOULD CONSIST OF PRACTICES THAT ARE CONSIDERED TO HAVE MINIMAL IMPACT ON INTERNATIONAL TRADE. PERMITTED PRACTICES WOULD BE LIMITED TO THOSE SPECIFICALLY AGREED AS FALLING WITHIN THAT CATEGORY. SUCH PRACTICES AND ANY PRACTICES JUDGED TO RESULT IN A DE MINIMUS SUBSIDY, WOULD NOT BE SUBJECT TO OFFSETTING MEASURES.

SUPPLEMENTARY PROTOCOLS

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THE FRAMEWORK OUTLINED ABOVE WOULD ESTABLISH THE GENERAL RULES GOVERNING SUBSIDIES AND OFFSETTING MEASURES. IN CERTAIN CASES, SPECIAL RULES MIGHT BE MORE DESIRABLE FOR PARTICULAR SUBSIDY PRACTICES. SUCH SPECIAL RULES COULD BE INCORPORATED IN THE CODE BY SUPPLEMENTARY PROTOCOL. FOR EXAMPLE, AN AGREEMENT ON EXPORT FINANCING OR REGIONAL AID MIGHT REGULATE THE USE OF SUCH PRACTICES.

SUBSIDIZED COMPETITION TO THIRD-COUNTRY MARKETS

THE CATEGORIZATION OF SUBSIDIES AS PROHIBITED, CONDITIONAL, AND PERMITTED WOULD ALSO APPLY TO SUBSIDIES THAT RESULT IN EXPORTS TO THIRD-COUNTRY MARKETS THAT DISPLACE EXPORTS BY OTHER SUPPLIERS. SINCE COUNTERVAILING IS NOT APPROPRIATE IN THIS CASE, OTHER COUNTERMEASURES WOULD BE AVAILABLE UNDER THE RULES FOR SUPPLYING COUNTRIES WHOSE SALES HAVE BEEN DISPLACED IN THIRD-COUNTRY MARKETS BY SUBSIDIZED EXPORTS OF OTHER SUPPLIERS.

COUNTERMEASURES

RULES AND PROCEDURES WOULD BE PROVIDED FOR THE APPLICATION OF COUNTERMEASURES WHERE PERMITTED BY THE RULES ON SUBSIDIES. SUCH RULES COULD PROVIDE FOR INJURY DETERMINATIONS WHERE APPROPRIATE IN CASES INVOLVING COUNTERVAILING DUTIES OR OTHER COUNTERMEASURES IN RESPONSE TO SUBSIDIZATION IN THIRD MARKETS.

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SUBSIDIES RESULTING IN IMPORT REPLACEMENT

SUBSIDIES THAT RESULT IN IMPORT REPLACEMENT WOULD REQUIRE A DIFFERENT APPROACH. SUCH SUBSIDIES CAN HAVE A SIGNIFICANT ADVERSE EFFECT ON THE TRADE OF SUPPLIERS TO THE MARKET IN QUESTION AND ON SUPPLIERS IN THIRD COUNTRIES INTO WHICH EXPORTS PREVIOUSLY ENTERING THE SUBSIDIZING COUNTRY ARE DEFLECTED. SUCH SUBSIDY RULES SHOULD PROVIDE FOR OBLIGATORY CONSULTATIONS REGARDING COMPLAINTS ON DOMESTIC SUBSIDY PRACTICES THAT COULD RESULT IN IMPORT REPLACEMENT. IN ADDITION, SIGNATORIES TO THE CODE SHOULD HAVE A REASONABLE EXPECTATION THAT NEW OR INCREASED SUB-SIDIES WILL NOT RESULT IN THE NULLIFICATION OR IMPAIRMENT
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OF BENEFITS UNDER TRADE AGREEMENTS.

DEVELOPING COUNTRIES

THE UNITED STATES BELIEVES IT WILL PROVE FEASIBLE AND APPROPRIATE TO NEGOTIATE PROVISIONS FOR DIFFERENTIAL TREATMENT UNDER PRESCRIBED CONDITIONS FOR DEVELOPING COUNTRIES IN CERTAIN AREAS OF SUBSIDIES AND COUNTERVAILING DUTY RULES. SUCH TREATMENT SHOULD BE GEARED TO THE PARTICULAR SITUATIONS OF DEVELOPING COUNTRIES AND TO PERIODS LINKED TO ACHIEVING PARTICULAR DEVELOPMENT OBJECTIVES.

NON-MARKET ECONOMY COUNTRIES

THE NATURE OF NON-MARKET ECONOMIES MAKES IT DIFFICULT TO DETERMINE WHETHER A SUBSIDY EXISTS AND IN WHAT AMOUNT. SUBSIDIES BY NON-MARKET ECONOMY COUNTRIES WILL REQUIRE DPFFERENT RULES, PERHAPS IN THE CONTEXT OF SAFEGUARD PROVISIONS.

NOTIFICATION PROCEDURES

THE CODE SHOULD PROVIDE FOR EFFECTIVE NOTIFICATION PROCEDURES, WHEREBY THE SUBSIDY PRACTICES OF COUNTRIES CAN BE BROUGHT TO THE ATTENTION OF THE ADHERENTS OF THE CODE BY A NUMBER OF WAYS, INCLUDING NOTIFICATIONS BY COUNTRIES OTHER THAN THE ONE GRANTING THE SUBSIDY.

ADMINISTRATIVE PROVISIONS

PROVISION SHOULD BE MADE FOR EFFECTIVE ADMINISTRATION OF THE CODE. UNTIL THERE IS GENERAL AGREEMENT ON THE MORE IMPORTANT SUBSTANTIVE ISSUES, THE UNITED STATES BELIEVES THAT CONSIDERATION OF THESE QUESTIONS SHOULD BE DEFERRED.
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